

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

YEDA RESEARCH AND)	
DEVELOPMENT CO., LTD.,)	
)	
Plaintiff,)	
)	CASE NO. 1:10-cv-5699
v.)	
)	
ABBOTT GMBH & CO. KG,)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff Yeda Research and Development Co. Ltd. (“Yeda”), by and through its undersigned attorneys, for its complaint against Defendant Abbott GmbH & Co. KG (“Abbott”), states:

NATURE OF ACTION

1. This is an action under 35 U.S.C. § 146 to review decisions of the Board of Patent Appeals and Interferences (“the Board”) of the U.S. Patent and Trademark Office in Interference No. 103,625 RES.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) and 35 U.S.C. § 146.

3. Abbott is a wholly owned subsidiary of Abbott Laboratories, Inc., which is an Illinois corporation that has its headquarters and principal place of business in this District at 100 Abbott Park Road, Abbott Park, Illinois, 60064.

4. Abbott is subject to personal jurisdiction in this Court because, *inter alia*, it systematically and continuously transacts business within the State of

Illinois, and because this action arises out of and/or relates to Abbott's business activities in Illinois.

5. Venue is proper in this Court under 28 U.S.C. § 1391 (c) and (d).

PARTIES

6. Yeda is a business entity organized and existing under the laws of Israel.

7. On information and belief, Abbott is a business entity organized and existing under the laws of the Federal Republic of Germany.

BACKGROUND

8. On May 4, 1990, Hans-Georg LeMaire, Heinz Hillen, Achim Moeller, Lothar Daum, Thomas Doerper and Thomas Subkowski filed International Patent Application PCT/EP90/00719, claiming the benefit of the filing date of German patent applications P39 15 072 (filed May 9, 1989) ("the '072 application") and P39 22 089 (filed July 5, 1989) ("the '089 application").

9. On September 26, 1991, application PCT/EP90100719 entered the national stage in the United States and was designated U.S. Patent Application No. 07/768,443.

10. On September 6, 1994, U.S. Patent Application No. 07/768,443 issued as U.S. Patent No. 5,344,915 ("the LeMaire patent").

11. On information and belief, at the time of the decisions complained of herein, Abbott owned the LeMaire patent.

12. On August 19, 1992, David Wallach, Hartmut Engelmann, Dan Aderka, Daniela Novick and Menachem Rubinstein filed U.S. Patent Application No.

07/930,443 (“the Wallach application”), claiming the benefit of U.S. Patent Application No. 07/524,263 (filed May 16, 1990), and Israel Patent Application Nos. 90339 (filed May 18, 1989), 91229 (filed August 6, 1989) and 94039 (filed April 6, 1990).

13. At the time of the decisions complained of herein, Yeda owned the Wallach application.

THE DECISIONS AT ISSUE

14. On October 1, 1996, the Board declared Interference No. 103,625 between the LeMaire patent and the Wallach application.

15. On May 22, 2000, the Board issued a Final Decision holding that the LeMaire patent is not entitled to the benefit of the filing dates of the ‘072 and ‘089 applications and that claims 1-3 of the LeMaire patent are therefore unpatentable.

16. On July 21, 2000, Abbott filed a complaint under 35 U.S.C. § 146 in the U.S. District Court for the District of Columbia, seeking reversal of the Board’s Final Decision.

17. On September 15, 2008, the District Court granted Abbott’s motion for summary judgment, vacated the Board’s Final Decision with respect to the ‘089 application, and remanded to the Board for further proceedings.

18. On October 14, 2008, Yeda appealed the District Court’s summary-judgment decision to the U.S. Court of Appeals for the Federal Circuit.

19. On May 26, 2009, the Federal Circuit dismissed Yeda’s appeal for lack of jurisdiction, on the basis that there had not been a final decision in the Interference.

20. On December 3, 2009 (on remand to the Board), the Board granted Abbott the priority benefit of the '089 application, and correspondingly redeclared the Interference.

21. On May 26, 2010, following further submissions by the parties, the Board issued a decision regarding the parties' preliminary motions that had been rendered moot by the Board's Final Decision of May 22, 2000 holding the LeMaire patent claims unpatentable.

22. In its May 26, 2010 decision, the Board (i) granted Abbott's preliminary motion to be accorded the priority benefit of the filing date of the '072 application; (ii) denied Yeda's preliminary motion that claim 2 of the LeMaire patent is not supported by an enabling disclosure as required under 35 U.S.C. § 112, ¶1; (iii) denied Yeda's preliminary motion that claim 2 of the LeMaire patent is indefinite and therefore fails to satisfy the requirements of 35 U.S.C. § 112, ¶ 2; (iv) denied Yeda's preliminary motion that claim 2 of the LeMaire patent is improper under 35 U.S.C. § 112, ¶ 4; (v) denied Yeda's preliminary motion to designate claims 44-46 and 65-66 of the Wallach application as not corresponding to the count; (vi) denied Yeda's preliminary motion to add new claims 69-71 to the Wallach application and designate those claims as corresponding to the count; (vii) denied Yeda's preliminary motion to amend claim 33 of the Wallach application; (viii) added Abbott's claim 3 as an additional alternative to the count; and (ix) awarded judgment in the Interference to Abbott.

23. Each of the Board's decisions on remand in which the Board ruled against Yeda, including the Board's decisions on December 3, 2009 and May 26, 2010, are erroneous as a matter of fact and law.

24. Yeda is dissatisfied with each of the Board's decisions on remand in which the Board ruled against Yeda, including the Board's decisions on December 3, 2009 and May 26, 2010, and Yeda seeks review and reversal of those decisions.

25. Yeda is entitled to judgment of priority of invention over Abbott, Yeda's involved claims are patentable, and Abbott's involved claims are unpatentable, including under 35 U.S.C. § 102(g).

REQUEST FOR RELIEF

WHEREFORE, Yeda prays for the following relief:

A. Judgment reversing each of the Board's decisions on remand in which the Board ruled against Yeda;

B. Judgment reversing the Board's May 26, 2010 decision in which it granted Abbott's preliminary motion to be accorded the benefit of the filing date of the '072 application, entered judgment against Yeda, and awarded priority of invention to Abbott;

C. Judgment reversing the Board's May 26, 2010 decision that Yeda is not entitled to a patent containing claims 33, 34, 36-41, 44-46, 62, and 65-68 of the Wallach application;

D. Judgment that Yeda's involved claims are patentable, and Abbott's involved claims are unpatentable, including under 35 U.S.C. § 102(g);

E. Judgment reversing the Board's May 26, 2010 decision denying Yeda's preliminary motion that claim 2 of the LeMaire patent is improper under 35 U.S.C. § 112, ¶¶ 1, 2 and 4;

F. Judgment reversing the Board's May 26, 2010 decision denying Yeda's preliminary motion to designate claims 44-46 and 65-66 of the Wallach application as not corresponding to the count;

G. Judgment reversing the Board's May 26, 2010 decision denying Yeda's preliminary motion to add new claims 69-71 to the Wallach application and to designate those claims as corresponding to the count, and denying Yeda's preliminary motion to amend claim 33 of the Wallach application;

H. Judgment reversing the Board's May 26, 2010 decision adding Abbott's claim 3 as an additional alternative to the count;

I. Judgment reversing the Board's December 3, 2009 decision that awarded Abbott priority benefit of the '089 application;

J. An award to Yeda of its costs, expenses, and reasonable attorneys' fees in this action; and

K. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: September 8, 2010

YEDA RESEARCH AND DEVELOPMENT
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